No. 90-255

OCT 5 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

NEW YORK TELEPHONE COMPANY
AND
ROCHESTER GAS AND ELECTRIC CORPORATION,
Petitioners,

vs.

JOSEPH CAHILL
AND
ROBERT ABRAMS, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
NEW YORK COURT OF APPEALS

MEMORANDUM OPPOSING CERTIORARI

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MEMORANDUM OPPOSING CERTIORARI

STATEMENT OF THE CASE

The New York Public Service Commission ("Commission") is the regulatory agency empowered by the New York Public Service Law to determine intrastate rates charged customers located in New York by investor-owned utilities. New York Public Service Law, §§65(1), 91(1).

On June 11, 1985, Robert Abrams, Attorney General of the State of New York, filed a petition with the Commission seeking discontinuance of its policy, initiated in 1970, authorizing

recovery from ratepayers of amounts paid by utilities for charitable contributions. In response to the Attorney General's petition, the Commission instituted its Case 29119 and invited interested parties to comment.

During 1986, the Attorney General intervened in cases involving the rates of three utilities, one of which was petitioner Rochester Gas and Electric Corporation, again asking the Commission to reverse its policy authorizing the recovery of charitable donations.[1] The Commission rejected the Attorney General's request in each of these cases[2] and, during 1987 and 1988, the Attorney General commenced proceedings pursuant to article 78 of the New York Civil Practice Law and Rules against the Commission and the three utilities seeking judicial review of these Commission orders.[3] The Attorney General brought these petitions as *parens patriae* on behalf of the citizens of the State of New York, who were affected by the Commission's policy.

In 1984, Joseph Cahill, a residential customer of petitioner New York Telephone Company, had brought an article 78 proceeding against the Commission and that company seeking similar relief on identical grounds.[4] In all of the proceedings arising from the Attorney General's and Cahill's petitions, the Commission was represented by its own counsel.

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[1] The Commission rate cases were 29327 and 29328 (Niagara Mohawk Power Corporation) (Joint Appendix ["J.A."] before the New York Court of Appeals at 744), 29426, 29427 and 29428 (Rochester Gas & Electric Corporation) (J.A. at 755), and 29433 (Central Hudson Gas & Electric Corporation) (J.A. at 756).

[2] The Commission rate case determinations were rendered in Opinion Nos. 87-3 and 87-3(A) (J.A. at 744), Opinion Nos. 87-13 (J.A. at 647-651) and 87-13(A), and Opinion No. 87-15 (J.A. at 634-645).

[3] *Abrams v. Public Service Commission and Niagara Mohawk Power Corporation*, Index No. 5865/87 (Sup.Ct.Alb.Co.), and *Abrams v. Public Service Commission, Rochester Gas & Electric Corporation and Central Hudson Gas & Electric Corporation*, Index No. 269/88 (Sup.Ct.Alb.Co.).

[4] *Cahill v. Public Service Commission*, Index No. 12464/84 (Sup.Ct.Alb.Co.). Cahill subsequently added the New York Telephone Company as a respondent and Central Hudson Gas & Electric Corporation was granted leave to intervene as a respondent.

On December 19, 1986, the New York Court of Appeals held that the Commission's orders constituted state action and that the petitions asserted a cognizable claim under the United States Constitution. This Court denied certiorari. *Cahill v. Public Service Commission*, 69 N.Y.2d 265 (1986), *aff'g* 121 A.D. 2d 842 (3d Dept. 1985), *cert. denied*, 484 U.S. 829 (1987).

On remand, the Supreme Court of the State of New York, Albany County, consolidated the Attorney General's and Cahill's petitions,[5] and granted the petitions insofar as they sought a declaration annulling the Commission's orders.[6]

The Commission and the four utility respondents appealed the Supreme Court order to the Appellate Division of the Supreme Court. The Appellate Division affirmed. *Cahill v. Public Service Commission*, 147 A.D.2d 49 (3d Dept. 1989).

The Commission and two of the four utilities which had been parties ceased to participate in the *Cahill* litigation upon entry of the Appellate Division order. Only the present petitioners sought review of the Appellate Division order in the New York Court of Appeals. On May 10, 1990, the Court of Appeals issued its opinion and order affirming the order of the Appellate Division. *Cahill v. Public Service Commission*, 76 N.Y.2d 102 (1990).

While *Cahill* was pending before the Court of Appeals, the Commission implemented the Appellate Division order and ultimately discontinued as to all utilities its policy authorizing the recovery of charitable donations. First, in response to a request by the Attorney General, on September 25, 1989 the Commission issued an order requiring petitioners and the two other utilities which had been parties to *Cahill* to establish special accounts into which the utilities were directed to pay amounts equal to the charitable donations which were recovered under the now superseded rate case orders. The utilities were

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[5] J.A. at 488-490.

[6] J.A. at 412-423.

ordered to use the amounts deposited into these segregated accounts as offsets against future rate increases. These deferral accounts were made effective retroactive to June 29, 1989, the date of entry of the Appellate Division order. Public Service Commission Case 29119, "Petition of the Attorney General Requesting Adoption of a Rule Prohibiting Utilities from Recovering from Ratepayers the Cost of the Utilities' Charitable Donations", Order Requiring Deferral of Revenues, Issued September 25, 1989. (Respondent's Appendix ["R.A."] at A-1.)

In a subsequent order involving a utility which had not been a party to the *Cahill* litigation, the Commission denied recovery of charitable contributions, referring to its September 25, 1989 order and noting that it had "recently revisited" its policy concerning charitable donations and had "ended the allowance of charitable contributions. . . ." Opinion No. 89-34, issued October 13, 1989 in Public Service Commission Case 88-G-229, "Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service", at 31. (R.A. at A-7.)

On July 6, 1990, the Commission issued its first order determining the rates of petitioner Rochester Gas and Electric Corporation following issuance of the September 25, 1989 order establishing the deferral accounts. In the rate case order, the Commission explicitly prohibited petitioner from recovering charitable donations from ratepayers. Opinion No. 90-17, issued July 6, 1990 in Public Service Commission Cases 89-E-166, 89-E-167 and 89-G-168, "Proceedings on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas & Electric Corporation for Electric, Street Lighting and Gas Service", at Appendix A, Schedule B, page 1; Appendix B, Schedule B, page 1. (R.A. at A-11, A-16.) The Commission also ordered petitioner to pass back to ratepayers $467,000 which it had segregated in accordance with the Commission's September 25, 1989 order. *Id.*, Appendix A, Schedule D at 1; Appendix B, Schedule C at 2. (R.A. at A-13, A-19.) The Commission has not had occasion since September 25, 1989 to issue an order determining the rates charged by petitioner New York Telephone Company.

ARGUMENT

Petitioners seek from this Court an order reversing the decision of the New York Court of Appeals. If this Court were to issue such an order, however, petitioners would still not be able to recover their charitable donations from ratepayers. Since the Commission has now issued orders removing charitable donations from the category of recoverable expenses, petitioners could not resume recovery for this item unless the Commission were to issue new orders authorizing such recovery.

Even if a reversal of the Court of Appeals decision placed the Commission in a position where it could once more authorize recovery for charitable donations, it would be under no legal obligation to do so. The result of its recent "revisiting" of the question led the Commission to end the allowance of the recovery of charitable donations. What the Commission would do upon a future review would be within the Commission's discretion, subject to further judicial review.

Given the present posture of this case, there is no "case or controversy" as required by Article III. As the Court said in *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976), ". . . the 'case or controversy' limitation of Art. III . . . requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." 426 U.S. at 41-42. Similarly, there must be a substantial likelihood that prospective relief by a federal court will redress the alleged injury. *Id.* at 45-46. *Accord Bender v. Williamsport Area School District*, 475 U.S. 534 (1986); *Warth v. Seldin*, 422 U.S. 490, 505 (1975); *Linda R.S. v. Richard D.*, 410 U.S. 614, 618 (1973).

In this case, even if this Court were to grant the petition for certiorari and reverse the decision of the Court of Appeals, the petitioners could not resume the recovery of charitable donations from ratepayers. The only party who can authorize such recovery, the Commission, was not before the Court of Appeals and is not before this Court.

This Court in *Simon* explained that there was no case or controversy when the party who could provide the relief sought was not before the court and it was speculative whether the plaintiff could be benefitted by a favorable decision. In *Simon*, the plaintiffs sought review of new Internal Revenue Service regulations which, plaintiffs claimed, had diminished the amount of care hospitals would provide the indigent without charge. The Court dismissed the petition because "it does not follow from the allegation . . . that the denial of access to hospital services in fact results from petitioner's new Ruling, or that a court-ordered return by petitioners to their previous policy would result in these respondents' receiving the hospital services they desire." 426 U.S. at 42.

Similarly here, it is wholly speculative whether the Commission, which is not a party, would authorize the recovery of charitable donations if it were free to do so. In light of the fact that this Court cannot afford petitioners the relief they seek, i.e., reinstitution of the Commission's policy authorizing the recovery of charitable donations, there is no case or controversy before the Court and certiorari should be denied.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: New York, New York
October 5, 1990

APPENDIX

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on September 7, 1989

COMMISSIONERS PRESENT:

Peter Bradford, Chairman
Harold A. Jerry, Jr.
Eli M. Noam, not participating
James T. McFarland, dissenting
Edward M. Kresky
Henry G. Williams

CASE 29119 – Petition of the Attorney General Requesting Adoption of a Rule Prohibiting Utilities from Recovering from Ratepayers the Cost of the Utilities' Charitable Donations.

ORDER REQUIRING DEFERRAL OF REVENUES

(Issued and Effective September 25, 1989)

BY THE COMMISSION:

Since 1970, the Commission has allowed utilities to recover in rates, as a reasonable business expense, a portion of their charitable contributions. On October 16, 1984, Mr. Joseph Cahill instituted a court proceeding challenging (1) the Commission's charitable contributions policy, and (2) the 1984 New York Telephone Company rate case decision insofar as it allowed that company to recover for charitable contributions. Mr. Cahill also asked the court to grant such other relief as it deemed necessary and proper.

Later, the Attorney General of the State of New York instituted Article 78 proceedings challenging rate case decisions for Niagara Mohawk Power Corporation, Central Hudson Gas & Electric

Corporation, and Rochester Gas and Electric Corporation. It argued that those decisions violated customers' First and Fourteenth Amendment rights by allowing rate recovery of charitable donations. The Attorney General's petition asked the court to prohibit rate recovery of charitable donations by these companies *and* to require refunds of all sums recovered on account of charitable donations pursuant to the decisions.

On June 1, 1989, the Appellate Division, Third Department, upheld a lower court decision granting both petitions but rejecting the Attorney General's request for monetary refunds. The Court, therefore, annulled the charitable contributions policy and the rate orders at issue. Although the utilities have expressed an intention to appeal, they have not obtained a stay of the Appellate Division's order.

By letter dated June 15, 1989, the Attorney General has asked that we implement the Appellate Division's decision by requiring *all* utilities – not only the four involved in the litigation – to reduce rates. In the alternative, the Attorney General asks that utilities be directed to defer revenues associated with the deferrals to be used as offsets against future rate increases or, as a last resort, to make rates temporary pending the utilities' appeals. The Consumer Protection Board has submitted a letter in support of the Attorney General.

Various utilities oppose the request. They argue, among other things, that there should be no rate change, or even a deferral, until all utilities have been afforded an opportunity to be heard on the adequacy of current rates.

In view of the Court's decision, which has not been stayed, some action is required with respect to the four companies involved in the litigation, whose rates the Court has held to be excessive. Reducing rates now would be unwarranted, for it would impose substantial and costly administrative burdens while having a barely noticeable effect on customers' bills. The better alternative is to require the four companies to defer the revenues associated with their allowances for charitable contributions and offset those deferrals against future rate awards

The deferrals should be effective as of June 29, 1989, the date on which the order implementing the Appellate Division's decision was entered.

The deferrals here required are necessary to insure that the mandate of the Court is complied with and that the rates of the companies affected are just and reasonable, in accordance with the Court's determination. Accordingly, this Order is adopted as an emergency action pursuant to Sec. 202(6) of the State Administrative Procedure Act (SAPA), inasmuch as its immediate adoption is necessary for the preservation of the general welfare and compliance with the requirements of Sec. 202(1) of SAPA would be contrary to the public interest.

The Commission orders:

1. Commencing June 29, 1989, New York Telephone Company, Niagara Mohawk Power Corporation, Central Hudson Gas and Electric Corporation, and Rochester Gas & Electric Corporation shall defer monthly an amount equivalent to one-twelfth (1/12) of the annual revenue allowance for charitable contributions authorized in each company's most recent rate proceeding(s) for electric, gas or telephone service as applicable. The federal income tax effect of these amounts shall also be deferred. Such deferrals shall continue until the Commission renders a decision in the respective company's next major rate proceeding(s) for the affected services (electric and gas or telephone). The amounts so deferred shall be disposed of in a manner consistent with their treatment for rates.

2. The amounts deferred pursuant to Ordering Clause 1 above shall accrue interest at the unadjusted customer deposit rate. Such amounts of interest, and their income tax effect, shall be deferred for disposition by the Commission.

3. The following accounts shall be used for the deferrals described in Ordering Clauses 1 and 2 above:

Electric and Gas:

Account 253, Other Deferred Credits, and

Account 190, Accumulated Deferred Income Taxes

Telephone:

Account 4360, Other Deferred Credits, and

Account 1360, Current Deferred Income Taxes - Dr, or

Account 1510, Noncurrent Deferred Income Taxes - Dr.

4. Records for the above deferrals shall be maintained in such a manner so as to readily identify to which department each is applicable.

5. This proceeding is continued.

By the Commission,

(SIGNED) JOHN J. KELLIHER
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 29119 - Petition of the Attorney General Requesting Adoption of a Rule Prohibiting Utilities from Recovering from Ratepayers the Cost of the Utilities' Charitable Donations.

JAMES T. McFARLAND, Commissioner, dissenting:

The long standing Commission policy of permitting utilities to expense charitable contributions was and is a proper and reasonable regulatory judgment.

Investor-owned utilities are not public entities such as a municipal subdivision or public benefit corporations. They are only publicly regulated in their mission and finances and are thus essentially private corporations. As such they are obligated to meet their traditional American corporate civic responsibilities by participating in charitable activities.

I believe the practice of utilities giving charitable contributions, if not abused and in reasonable amounts, is a worthwhile and laudable utility practice which should be continued.

Further, to conclude that a ratepayer can follow the fraction of a cent of his or her monthly payment to a utility to its ultimate destination with a particular charitable activity strains credulity. It makes as much sense as suggesting that one can follow the wool from a single sheep in the flock to its ultimate destination as a thread in a man's suit. To justify the preclusion of the charitable giving practiced by utilities as a violation of freedom of speech or freedom of religion is simply an over-extension of those treasured doctrines.

I would hope that ultimately the decision of the intermediate appeallate court will be reversed on appeal. There should be no change in this Commission's policy until a final judicial determination of this is made.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 89-34

CASE 88-G-229 - Proceeding on motion of the Commission as to the rates, charges, rules and regulations of Consolidated Edison Company of New York, Inc. for gas service.

OPINION AND ORDER APPROVING REVENUE REQUIREMENT SETTLEMENT AND PRESCRIBING RATE DESIGN

Issued and Effective: October 13, 1989

Con Edison is to return excess earnings to its ratepayers over a 12-month period.

4. *Charitable Contributions*

The Stipulation reflects inclusion of $303,000 of charitable contributions, and provides that the allowance shall continue until the Commission's policy of allowing charitable contributions as a recoverable expense is finally found to be unconstitutional and all rights of appeal are exhausted. The recommended decision rejected, on the basis of existing Commission policy, the Attorney General's request that company revenues attributable to charitable contributions be collected subject to refund.

The Attorney General excepts, and argues on the basis of the Appellate Division's decision in *Cahill*[1] that the Commission is bound legally and morally to implement the decision by prohibiting continued recovery of charitable contributions in rates.

Con Edison points out in Reply Exceptions that the treatment of charitable contributions follows the requirements of the Stipulation, which the Attorney General has neither supported nor opposed. Since all court appeals have not been exhausted, the company would have the terms of the Stipulation control.

Staff replies that it sees no reason to depart from the Stipulation. However, as a possible compromise of the opposing positions, staff suggests that allowed revenues be reduced by $303,000, but that Con Edison be permitted to record the expense in a deferred account. If the final outcome of *Cahill* is contrary to any allowance, the expense deferral can be reversed; if the final outcome of *Cahill* supports an allowance, we can prescribe a method for recovery of the deferred amount.

We have recently revisited our policy concerning charitable contributions. We ended the allowance of charitable contributions, by means of a deferral of revenues, for the companies

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[1] *Cahill v. Public Service Commission*, 147 App. Div. 2d 49 (3d Dept. 1989).

involved in the *Cahill* litigation.[1] No action was taken in that order on the Attorney General's request that the rates of all utilities be reduced to reflect disallowance of charitable contributions or that the utilities be directed to defer the related revenues. For utilities not involved in *Cahill*, we decided to reflect the court's prohibition on rate recovery of charitable contributions in the next rate case of each company. Accordingly, in Brooklyn Union's pending gas rate case,[2] a settlement that left rates unchanged was approved, but we reflected a disallowance of charitable contributions by reducing the amortization of deferred tax credits. Consistent with *Brooklyn Union*, in this proceeding, which involves a rate increase as part of the settlement Stipulation, the appropriate vehicle for reflecting disallowance of charitable contributions is the increase itself.

The revenue increase calculated according to the terms of the Stipulation should be reduced by $303,000 to reflect elimination of any recovery for charitable contributions expense.

Clarification as to Second- and Third-Stage Increases

The language of the Stipulation with respect to the permitted second and third stage increases appears susceptible to misinterpretation and future argument, despite present agreement by staff and the company as to what is intended. In order to avoid future controversy and to make clear the basis upon which we are evaluating the Stipulation,

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[1] Case 29119, *Petition of the Attorney General Requesting Adoption of a Rule Prohibiting Utilities from Recovering from Ratepayers the Cost of the Utilities' Charitable Donations, Order Requiring Deferral of Revenues*, issued September 25, 1989.

[2] Case 88-G-226, *The Brooklyn Union Gas Company*.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 89-E-166 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas & Electric Corporation for Electric Service.

CASE 89-E-167 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas & Electric Corporation for Electric Street Lighting Service.

CASE 89-G-168 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas & Electric Corporation for Gas Service.

OPINION AND ORDER DETERMINING REVENUE REQUIREMENT AND RATE DESIGN

Issued and Effective: July 6, 1990

APPENDIX A
SCHEDULE B
(Page 1 of 2)

CASE 89-G-168

ROCHESTER GAS AND ELECTRIC CORPORATION
Gas Department Operating Expenses 12 Months Ended June 30, 1991 ($000's)

	As Adjusted by ALJ	Post-Record Updates & Commission Adjustments	ALJ as Adjusted	Authorized Increase	Per Commission
Purchased Gas	152,014	0	152,014	$0	152,014
Payroll	25,878	0	25,878	0	25,878
Pensions	2,226	0	2,226	0	2,226
Medical Insurance	1,300	0	1,300	0	1,300
Life Insurance	231	0	231	0	231
401(k) Savings Plan	480	0	480	0	480
Long Term Disability	47	0	47	0	47
Workers Compensation	270	0	270	0	270
Amortizations	(1,572)	0	(1,572)	0	(1,572)
Transportation	1,087	0	1,087	0	1,087
Consultants	1,248	0	1,248	0	1,248
Outside Services – Legal	803	0	803	0	803
Security Services	101	0	101	0	101
Contractors	1,558	0	1,558	0	1,558
Materials and Supplies – Stock	2,547	0	2,547	0	2,547

					152,014
Insurance	865	0	865	0	865
Research and Development	778	0	778	0	778
Telephone	503	0	503	0	503
Postage	495	0	495	0	495
Uncollectibles	1,855	0	1,855 (7a)	31	1,886
-OTHER-					
Injuries and Damages	130	0	130	0	130
Advertising	136	0	136 (7b)	3	139
Bank Fees	206	0	206	0	206
Donations	0	0	0	0	0
PSC Assessment	739	0	739	0	739
Energy Used By The Company	235	0	235	0	235
Outside Services – Other	4,182	0	4,182	0	4,182
Total Gas Expenses	$198,342	$0	$198,342	$34	$198,376

APPENDIX A
SCHEDULE D (Pages 1 of 2)
ROCHESTER GAS AND ELECTRIC CORPORATION
Gas Department
Rate Base
12 Months Ended June 30, 1991
($000's)

	As Adjusted by ALJ	Post-Record Updates & Commission Adjustments	ALJ as Adjusted	Authorized Increase
Net Plant	$226,619	$0	$226,619	$0
Working Capital				
Materials and Supplies	2,254	0	2,254	0
Prepayments	2,608	0	2,608	0
Operation and Maintenance	6,002	0	6,002 (c)	4
Total Working Capital	10,864	0	10,864	4

Accumulated Deferred FIT	(12,372) (a)	928	(11,444)	0
Accumulated Deferred ITC	(6,436)	0	(6,436)	0
EBCAP	(4,977)	0	(4,977)	0
Amortization				
Research and Development	(131)	0	(131)	0
Management Audit Fee	74	0	74	0
Insurance Reserve	(30)	0	(30)	0
HIECA	864	0	864	0
Unbilled Revenue Adj.	14,705 (b)	(1,805)	12,900	0
Pension Passback	(87)	0	(87)	0
Contributions Passback	(27)	0	(27)	0
Excess Earnings Passback	(1,156)	0	(1,156)	0
Total Amortization	14,212	(1,805)	12,407	0
Deferred Gas Costs	0	0	0	$0
Total Average Rate Base	$227,910	($877)	$227,033	$4

APPENDIX B
SCHEDULE B
(Page 1 of 3)

C. 89-E-166,167

ROCHESTER GAS AND ELECTRIC CORPORATION
Electric Department Operating Expenses 12 Months Ended June 30, 1991 ($000's)

	As Adjusted by ALJ	Post-Record Updates & Commission Adjustments	ALJ as Adjusted	Authorized Increase	Per Commission
Fuel – Nuclear	$26,147 (a)	($3,638)	$22,509	$0	$22,50
Fuel – Fossil	46,588 (b)	4,607	51,195	0	51,195
Purchased Power	30,116 (c)	8,458	38,574	0	38,574
Purchased Gas	697	0	697	0	697
Transmission – Wheeling	8,286	0	8,286	0	8,286
Oswego No. 6	3,122	0	3,122	0	3,122
NYS Power Pool Assessment	1,541	0	1,541	0	1,541
Amortization Items	5,503 (i)	580	6,083	0	6,083
Payroll	78,043 (d)	(361)	77,682	0	77,682
Pensions	6,291	0	6,291	0	6,291
Medical Insurance	3,672	0	3,672	0	3,672

Life Insurance	651	0	651	0	651
401(k) Savings Plan	1,357	0	1,357	0	1,357
Long Term Disability	133	0	133	0	133
Worker's Compensation	737	0	737	0	737
Payroll Complement Adj. — Benefits	397	0	397	0	397
Transportation	1,596	0	1,596	0	1,596
Contract. Services — Fly Ash Removal	833	0	833	0	833
Contract. Services — Tree Trimming	3,141	0	3,141	0	3,141
Contract. Services — Misc.	7,053 (e)	135	7,188	0	7,188
Legal Services	1,131	0	1,131	0	1,131
Security Services	2,551	0	2,551	0	2,551
Consultants	13,721	0	13,721	0	13,721
Materials and Supplies – Stock	10,880	0	10,880	0	10,880
Insurance	6,401 (f)	450	6,851	0	6,851
Research and Development	4,147	0	4,147	0	4,147
Demand Side Management	3,739 (g)	(2,899)	840	0	840
Telephone	2,028	0	2,028	0	2,028
Postage	720	0	720	0	720

Nine Mile Point # 2	18,199 (h)	(72)	18,127	0	18,127
Uncollectibles	1,729 (j1)	10	1,739 (j2)	116	1,855
- OTHER -					
Advertising	349 (k1)	2	351 (k2)	25	376
PSC Assessment	1,647	0	1,647	0	1,647
Water for Power	300	0	300	0	300
Energy Used By The Company	(235)	0	(235)	0	(235)
Donations	0	0	0	0	0
Bank Fees	934	0	934	0	934
Injuries and Damages	321	0	321	0	321
Outside Services –					
Other & Misc.	14,188	0	14,188	0	14,188
Total Electric Expenses	$308,654	$7,272	$315,926	$141	$316,067

APPENDIX B
SCHEDULE C
C. 89-E-166,167 (Page 1 of 3)
ROCHESTER GAS AND ELECTRIC CORPORATION
Electric Department Federal Income Tax 12 Months Ended June 30, 1991 ($000's)

	As Adjusted by ALJ	Post-Record Updates & Commission Adjustments	ALJ as Adjusted	Authorized Increase	Per Commission
Operating Income Before Federal Income Taxes	$112,954	$2,361	$115,315	$34,178	$149,493
Adjustments to Operating Income:					
Interest on Long Term Debt	(55,563) (a)	35	(55,528)	0	(55,528)
Interest on Short Term Debt	(4,719) (b)	(118)	(4,837)	0	(4,837)
Mortgage Recording Tax	411	0	411	0	411
Add'l. Ded. Property Taxes	(479)	0	(479)	0	(479)
Add'l. Deductible Depreciation	(42,481) (c)	9,969	(32,512)	0	(32,512)
Cost of Removal	(3,080)	0	(3,080)	0	(3,080)

Preferred Stock Dividends	(124)	0	(124)	0	(124)
Uncollectible Reserve	263	0	263	0	263
Nuclear Fuel Storage	0	0	0	0	0
Nuclear Fuel Depreciation	4,270(d)	(3,363)	907	0	907
Nuclear Decommissioning	5,104	0	5,104	0	5,104
Taxable Status Date	1,131	0	1,131	0	1,131
Interest Capitalized	4,552	0	4,552	0	4,552
Energy Audits	186	0	186	0	186
Insurance Reserve	0	0	0	0	0
Management Audit	78	0	78	0	78
Materials Management	0	0	0	0	0
Amortization of Other Plant	78	0	78	0	78
Reserach and Development	21	0	21	0	21
Demand Side Management	495(e)	(2,319)	(1,824)	0	(1,824)
Sterling Abandonment	1,664	0	1,664	0	1,664
Construction Contributions	1,472	0	1,472	0	1,472
Pension Passback	55	0	55	0	55
Nine Mile 2 Deferred Items	0	0	0	0	0

Unbilled Revenues	0	0	0	0	0
Mirror CWIP Amort	398	0	398	0	398
Ginna Reblade	660	0	660	0	660
Contributions Passback	(440)	0	(440)	0	(440)
Operating Income Adjustments	(86,048)	4,204	(81,844)	0	(81,844)
Taxable Income	26,906	6,565	33,471	34,178	67,649
Federal Income Tax @ 34%	$9,148	$2,232	$11,380	$11,620	$23,001